

RECEIVED
2010 DEC 10 PM 4:23
FEC MAIL CENTER

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

December 10, 2010

VIA HAND DELIVERY

Mr. Christopher Huey, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

WRITER'S DIRECT LINE
202.295.4083
cmitchell@foley.com
CLIENT/MATTER NUMBER
999100-01

OFFICE OF GENERAL
COUNSEL

2010 DEC 10 PM 4:40

RECEIVED
FEDERAL ELECTION
COMMISSION

Re: MUR 6407 - Senate Conservatives Fund, Respondent

Dear Mr. Huey:

The undersigned represents Senate Conservatives Fund, the Respondent in the above-referenced MUR ("SCF"). SCF is a multi-candidate political committee registered with the Federal Election Commission ("the Commission") and a leadership PAC associated with Sen. Jim DeMint (R-SC). See 11 C.F.R. §§100.5(e)(3) and (6).

The Complaint filed in this MUR by the Colorado Democratic Party alleges that because Sen. Jim DeMint appeared at a public event in July with Ken Buck, the Republican nominee for the United States Senate from Colorado ("Mr. Buck"), SCF's independent expenditures in support of Mr. Buck's candidacy were converted to coordinated public communications under the Commission's regulations at 11 C.F.R. §109.21 *et seq.*

The sole 'evidence' offered by Complainant that supposedly renders SCF's independent expenditures 'coordinated public communications' is Sen. DeMint's presence at a public campaign event with Mr. Buck on July 8, 2010. An appearance or even more than one appearance by Sen. DeMint at a campaign event with Mr. Buck does not come close to satisfying the Commission's definition of conduct establishing 'coordinated public communications' by SCF with the Buck campaign.

Indeed, there is not a single fact in the Complaint (or elsewhere) to support the allegation that SCF's public communications satisfy *any* provision of the Commission's 'conduct standard' at 11 C.F.R. §109.21(d), to-wit:

(1) SCF's communications were not made at the 'request or suggestion' of the Buck campaign. The communications were not 'created, prepared, or distributed at the request or suggestion of Mr. Buck, his authorized committee, or a political party committee'. See 11 C.F.R. §109.21(d)(1)(i);

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MIAMI

MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SHANGHAI

SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.

WASH_7563840.1

11044294072

Mr. Christopher Huey, Esq.

December 10, 2010

Page 2

(2) SCF's communications were not created, produced, or distributed at SCF's suggestion with the 'assent' of Mr. Buck, his authorized committee or a political party committee. See 11 C.F.R. §109.21(d)(1)(ii);

(3) SCF's communications were not made with 'material involvement' of Mr. Buck, his authorized committee or a political party committee with SCF or its communications. In fact, SCF's communications were made with *no* involvement of Mr. Buck or anyone on his behalf. All information material to the creation, production or distribution of the content, audience, mode, media outlets, timing, frequency, and/or duration of the SCF communications were based upon and obtained from publicly available source(s). See 11 C.F.R. §109.21(d)(2)

(4) SCF's communications were not based upon and were not occasioned upon substantial (or *any*) discussions with Mr. Buck or the Buck campaign, but rather were created, produced and distributed solely based upon information from public sources.

The Commission has defined 'substantial discussion' as follows:

"A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication." See 11 C.F.R. §109.21(d)(3).

An appearance by Sen. DeMint at a campaign event hardly rises to a 'substantial discussion' between SCF and the Buck campaign.

There were no common vendors, no common employees or independent contractors between SCF and the Buck campaign; See 11 C.F.R. §§109.21(d)(4) and (5). The SCF communications did not 'republish, distribute or disseminate materials' from the Buck campaign. See 11 C.F.R. §109.21(d)(6).

In short, there simply are *no* facts alleged, because none exist, that fall within the conduct prong of the Commission's regulations for coordinated public communications. Accordingly, the Complaint in this MUR must be summarily dismissed.

Please contact me at (202) 295-4081 if you have questions concerning this Response.

Thank you.



FOLEY & LARDNER LLP

Mr. Christopher Huey, Esq.

December 10, 2010

Page 3

Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq., Counsel
Senate Conservatives Fund

cc: The Honorable Jim DeMint

11044294074